



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SOUTHAMPTON SOLAR LLC
FOR
THE SOUTHAMPTON SOLAR PROJECT
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Southampton Solar LLC, regarding the Southampton Solar Project, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Compensation" or "Compensatory Mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Impacts" means results caused by those activities specified in § 62.1-44.15:20A of the Code of Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Palustrine" means the palustrine system which includes all nontidal wetlands dominated by trees, shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5%.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
10. "Property", "Parcel" or "Site" means the Southampton Solar Project located at 20515 General Thomas Highway, Newsoms, Virginia, and 30047 Clarksbury Road, Boykins, Virginia.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.
12. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.
13. "SSL" means Southampton Solar LLC, a limited liability company authorized to do business in Virginia. SSL is a "person" within the meaning of Va. Code § 62.1-44.3.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.

21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. SSL is developing and is scheduled to operate a 100MW solar project ("Project") at the Property. The Property contains nontidal palustrine forested wetlands and intermittent streams, which are surface waters of the Commonwealth.
2. On February 21, 2018, DEQ received notification from SSL regarding a potential release of sediment into wetlands at two locations associated with the construction of the Project, located near Boykins, Virginia.
3. On February 22, 2018, DEQ requested follow up documentation from SSL, which was received on February 27, 2018. In its response, SSL identified the two unauthorized impact areas as "Pod A3" (approximately 56 acres in size, installation of the solar panel arrays was complete, but the final site stabilization was still ongoing) and "Pod B1" (approximately 28 acres in size, as installation of the solar panel arrays was complete, but the final site stabilization was ongoing).
4. On April 23, 2018, DEQ staff conducted a compliance inspection of the Property to determine compliance with the State Water Control Law and the Regulations. During this inspection and subsequent records review DEQ staff observed the following:
 - a. In Pod A3 staff observed approximately 0.014 acres of palustrine forested wetlands and 50 linear feet of stream had both been impacted by the deposition of 3 to 4 inches of sediment, a pollutant. In Pod B1 approximately 0.2 acres of palustrine forested wetlands had been impacted by the deposition of 1 to 2 inches of sediment.
 - b. DEQ files do not indicate that a VWP Permit had been issued authorizing the impacts observed in Pod A3 and Pod B1.
5. 9 VAC 25-210-50(A) states, "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions."
6. Va. Code § 62.1-44.5(A) states, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter,

it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions...”

7. Va. Code § 62.1-44.15:20(A) states, “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
8. On June 27, 2018, DEQ issued NOV No. 1806-000758 to SSL for the violations in C(4) - (7), above.
9. On July 13, 2018, DEQ received a written response to the NOV. In this response, SSL stated that the discharge of sediment occurred due to significant weather events and the subsequent overwhelming of the erosion and sediment control features. The Response also detailed the corrective measures completed to prevent unauthorized impacts to state waters.
10. Based on the results of April 23, 2018, DEQ inspection and subsequent file review, the Board concludes that SSL has violated 9 VAC 25-210-50(A), Va. Code § 62.1-44.5(A), and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(4) – C(7), above.
11. In order for SSL to complete its return to compliance, DEQ staff and representatives of SSL have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders SSL, and SSL agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$24,375 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control

Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SSL shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, SSL shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of SSL for good cause shown by SSL, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1806-000758, dated June 27, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility for matters not contemplated in this Order and arising from facts or occurrences after the execution date of this Order; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, SSL admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. SSL consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order
5. SSL declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by SSL to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SSL shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other

unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. SSL shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SSL shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SSL. Nevertheless, SSL agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after SSL has completed all of the requirements of the Order;
 - b. SSL petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to SSL.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SSL from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any documents to be submitted pursuant to this Order shall be submitted by SSL or an authorized representative of SSL.

13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, SSL voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30 day of May, 2019.



Craig Nicol, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

SSL voluntarily agrees to the issuance of this Order.

Date: 3/28/19 By: *Amanda Tornabene* Vice President, Environmental Services
(Person) (Title)
Southampton Solar LLC

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 28th day of March,
2019, by Amanda Tornabene who is Vice President of Southampton Solar LLC, on behalf of the
company.



Angela B. Fitzgerald
Notary Public

7022016

Registration No.

My commission expires: 3/31/2022

Notary seal:

APPENDIX A

SCHEDULE OF COMPLIANCE

1. No later than 60 days after the effective date of this Order, SSL shall submit an approvable Corrective Action Plan ("CAP") for the restoration of state waters on the Property at Pod A3 and B1 that have been impacted without a Permit. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. SSL shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
2. Upon DEQ approval of the CAP, SSL shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. SSL shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then SSL shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, SSL shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by SSL in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by December 31, 2023, or by the end of the last monitoring period, as specified in the Final CAP or any alternative CAP, and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then SSL shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. SSL shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. SSL shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. Unless otherwise specified in this Order, SSL shall submit all requirements of Appendix A of this Order to:

Enforcement
DEQ – Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462